UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,187	02/11/2004	Shinya Usami	8028 - 1047	1620

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YOUNG & THOMPSON
209 Madison Street
Suite 500
ALEXANDRIA, VA 22314

EXAMINER
CHORNESKY, ADAM B

ART UNIT	PAPER NUMBER
3688	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>01 May 2008</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-14</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-14</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1.   The following is a Non-Final Office action in response to communications

received May 1, 2008. Claims 1, 2, and 7-11 have been amended, and claims 12-14

have been added. Claims 1-14 are currently pending and have been considered below.

Response to Amendment

2.   Examiner has reviewed all amendments and additions to claims made by

Applicant in the communications received May 1, 2008 and hereby withdraws all prior

objections and § 112 2nd rejections.

3.   Applicant argument regarding the indefiniteness of Claim 9 has been considered

by the Examiner and in view of Applicant amendment, rejection is hereby withdrawn.

4.   Applicant argument regarding rejection under 35 U.S.C. §101 that claims 8, 10,

and 11 have been amended to overcome this rejection has been considered by the

Examiner and the rejection is hereby withdrawn.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6.   Claims 1-14 rejected under 35 U.S.C. 102(b) as being anticipated by Mehta et al.

(US 20020131404 A1).

Claims 1, 2, 7, 8, 9, 10, and 11: <u>Mehta</u> discloses a wireless terminal

advertisement system which comprises:

an advertisement delivery server comprising

means for storing an advertisement information and a plurality of pieces of partial

software of predetermined software (pg. 5, par. 64 via applications are stored locally in

a carrier's application data repository, which may be located in the MAS or at the

carrier's premises, or are optionally stored in trusted third-party servers),

means for selecting at least one of the plurality of pieces of partial software

corresponding to the advertisement information upon accessing the accessed

advertisement information (pg. 5, par. 63 via the subscriber may select from the menu

routines that, for example, manage applications already installed on the device and

present new applications that can be downloaded), and

means for delivering the accessed advertisement information and the selected at

least one of the plurality of pieces of partial software (pg. 5, par. 63 via the routines may

allow the subscriber to obtain version information for installed applications, to download

updates for those applications when they become available); and

a wireless terminal connected to the advertisement delivery server via a

communication network, comprising

a software storage section configured to, each time the wireless terminal

receives the advertisement information from the advertisement delivery server and the

selected at least one of the plurality of pieces of partial software, sequentially store the

received at least one of the plurality of pieces of partial software (pg. 2, par. 16 via the

Mobile Application System (MAS) provides a command interface to the system, which

supports application discovery, content downloading, and content downloading history),

a software linking means for linking the plurality of pieces of partial software

stored in said software storage section to form executable software (pg. 19, par. 145 via

the Inspect Application routine of a Deployment Manager, where the routine

deconstructs/decodes the structure of the application code if required to identify APIs,

including packages, classes, methods, and fields, or other structures as appropriate),

and

a software executing means for executing the executable software formed by

said software linking means (pg. 1, par. 5 via application, resources, and other content

is provisioned and verified by the MAS for authorized access by the subscriber,

compatibility with a requesting subscriber device, and/or compliance with security and

billing policies of the carrier and system administrators of the MAS so that applications,

resources, and other content can be downloaded to devices, such as wireless devices,

with greater assurance of their ability to successfully execute).

Claim 3: Mehta discloses all the elements of Claim 1 and further discloses

wherein

said wireless terminal further comprises a partial software transmission/reception

section for transmitting and receiving particular pieces of partial software stored in said

software storage section to and from another wireless terminal via the communication

network (pg. 19, par. 145 via the Inspect Application routine of a Deployment Manager,

where the routine deconstructs/decodes the structure of the application code if required

to identify APIs, including packages, classes, methods, and fields, or other structures as

appropriate, and Examiner construes that deconstruction on the transmission end

implies reconstruction on the reception end).

Claim 4: Mehta discloses all the elements of Claim 2 and further discloses

wherein

said wireless terminal further comprises an identification information

transmission/reception section for transmitting and receiving particular pieces of

identification information stored in the software identification information storage section

to and from another wireless terminal via the communication network (pg. 13, par. 112

via each device profile contains hardware specific information and resource

characteristics, such as the amount of runtime memory and flash memory, chip

identification, maximum download size, and whether the device is "OTA" compliant,

where OTA refers to Sun Microsystem's Over The Air conformance specification, and

devices that conform to OTA support the tracking of successful downloads on devices

amongst other capabilities).

Claim 5: Mehta discloses all the elements of Claim 1 and further discloses

wherein

said wireless terminal further comprises a relationship displaying means for displaying the relationship between the group of pieces of partial software of executable software and pieces of partial software currently stored in the storage section (pg. 1, par. 7 via the list provided to the subscriber device during application discovery is filtered to display only content that has been verified according to application analysis procedures).

Claim 6: <u>Mehta</u> discloses all the elements of Claim 2 and further discloses wherein

said advertisement delivery server and said software delivery server are formed as a single delivery server (pg. 15, par. 122 via Through the Personalization Website 803, system administrators can notify subscribers of the availability of updated or new applications, or "tie-ins," by which system administrators can display product offerings or advertisements through "push" messaging).

Claim 12: <u>Mehta</u> discloses all the elements of Claim 1 and further discloses wherein the plurality of pieces of partial software comprise a single software program divided into a plurality of pieces (pg. 5, par. 63 via the routines may allow the subscriber to obtain version information for installed applications, to download updates for those applications when they become available).

Claim 13: <u>Mehta</u> discloses all the elements of Claim 12 and further discloses wherein the single software program is a game program (pgs. 3-4, par. 59 via customers are able to quickly and conveniently update the operating software on their wireless devices and download popular applications including games).

Claim 14: <u>Mehta</u> discloses all the elements of Claim 1 and further discloses wherein each piece of the plurality of pieces of partial software is received at the wireless terminal in response to a request to view an advertisement (pg. 10, par. 94 via requested applications where the Instrumentation Installer 706 can modify the code in the application according to other policies that are specified by carriers, for example, policies that implement promotions and advertising campaigns).

Response to Arguments

7.   Applicant's arguments with respect to claim1-11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure includes:

Horel et al. (US 7113766 B2) teaches transaction processing during which a transaction billing event is created.

Minear et al. (US 20060173758 A1) teaches a system and method for providing subscribed applications on wireless devices over a wireless network.

Wells et al. (US 6805634 B1) teaches a method for downloading data to gaming devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM CHORNESKY whose telephone number is (571)270-5103. The examiner can normally be reached on Monday - Thursday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Myhre can be reached on 571-272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A. Chornesky
June 25, 2008

/James W Myhre/
Supervisory Patent Examiner, Art Unit 3688